ment obtained against the city upon confession of judgment by the corporation counsel. *Held*, the corporation cousel had no power to confess judgment against the city, as the power to settle claims resides in the comptroller, and collection of the judgment should be restrained. Three judges dissent upon the ground that corporation counsel did have such power, and further that a judgment cannot be attacked in equity on the ground that it was entered without authority, but the proceeding must be by motion in the action resulting in the judgment.

It seems plain from the charter provisions and general law that the corporation counsel had no power to confess judgment. *San Francisco* v. *LeRoy*, 138 U. S. 656. But the mode of attacking the judgment is without precedent. The Court in the original action had jurisdiction and confession of judgment was a mere *irregularity* for which the judgment cannot be impeached. *Black, Judgments*, 261. In the original action a motion to set aside judgment was made and denied. Where such a motion has been made and refused equity will not interfere by injunction. *Black, Judgments*, 363. No fraud or collusion in obtaining judgment was alleged nor was it denied that the city was justly indebted.

PROXIMATE CAUSE—INJURIES—NEGLIGENCE—EVANSVILLE, ETC. RY. CO. V. WELCH, 58 N. E. 88 (Ind.)—A man was struck by appellant's engine and hurled against appellee, who was injured in consequence. *Held*, on appeal, the plaintiff could not recover, as the defendant's negligence was not the proximate cause of his injury. To same effect see *Wood* v. *Penn. R.R. Co.*, 177 Pa. St. 306.

STATUTE OF FRAUDS—PART PAYMENT OF PRICE—RAYMOND V. COLTON, 104 Fed. 219.—Plaintiff was vice-president, general manager, and director of a joint stock mercantile company. Defendant was a stockholder in the company. Plaintiff by parol agreement would "get out" of the company in consideration of receiving one-fourth of the goods owned by the company. Several days after this arrangement plaintiff handed his resignation to defendant and now brings suit for the goods. *Held*, no such part payment as to take the contract out of the Statute of Fraud.

The decision in this case turns upon the peculiar wording of the New York statute. The general rule is that time of payment is unimportant. *Davis & Moore*, 13 Me. 424. And we understand that it is not authoritatively settled that payment *must* be made before suit is commenced. The New York statute demands that the payment should be made at the same time as the contract. *Jackson* v. *Tupper*, 101 N. Y. 575. A reaffirmance of the contract at the time the part payment is made will satisfy the statute. The facts in this case would seem to bring it under this last proposition.

TAXATION—EXEMPTIONS—YOUNG MEN'S CHRISTIAN ASS'N OF OMAHA V. DOUGLAS COUNTY, 83 N. W. 924 Neb. A Young Men's Christian Association owned a building and used all of it except the first floor, which was rented for business purposes. *Held*, that the first floor not being used exclusively for educational, charitable, or religious work, was not exempt from taxation under the general revenue laws of the State.

There are two views held as to exemptions of this nature. The first holds that the exemption is dependent upon the ownership of the property, regardless of its use. 12 *Am. & Eng. Ency.* 325. *University of South* v. *Skidmore*,

87 Term, 155. In the case under consideration the second, and what seems to be the better view, viz: that such property is exempted only when used by the grantee for appropriate purposes. *Stohl* v. *Association*, 58 Pac. 796, *Association* v. *Pelten*, 36 Ohio 258. The second contention would also be supported by the fact that all such exemptions should be strictly construed as they are in derogation of the equal rights of all.

TRADE NAME—DESCRIPTIVE TERMS—FULLER V. HUFF, 104 Fed. 141.—The long continued use of a trade name, even though it is descriptive of quality, can be protected by injunction and the fact that the packages were dissimilar in appearance and had the place of manufacture plainly printed on them does not take it outside of the rule of unfair competition.

This case goes further than any previous case we have seen in regard to two points. The general rule is that names descriptive of quality can not be protected as trade-marks. *Ginter* v. *Kinney Tobacco Co.*, 12 Fed. 182. This case of *Fuller* v. *Huff* makes a descriptive name which has long been used a valid trade-mark. This is in accordance with the general tendency of the day in the development of the law of trade-mark. The other point that although the use of the name was accompanied by simulation of packages and the places of manufacture printed on them was different, yet it constitutes unfair competition, seems to carry this doctrine further than previous cases. We have understood that such a general similarity in appearance as would mislead the ordinary purchaser was the best. *Lorillard Co.* v. *Pepper*, 86 Fed. 956.

VENDOR AND VENDEE—RECISSION—IMPROVEMENTS—RIGHT TO COMPENSATION—LUTOV V. BADHAM, 37 S. E. 133 (N. C.) *Held*, where a vendee has entered and placed valuable improvements on land under a parol contract to convey, and the vendor repudiates the contract and refuses to convey, the vendee or his personal representative may maintain an action to recover compensation for such improvements, and the right to such compensation exists though the vendor has obtained possession.

It seems well settled that where improvemets have been made under parol contract, compensation will be allowed for them where the party claiming is in possession. *Hedgepeth* v. *Rose*, 95 N. C. 41. The present case allows compensation after the occupant has given up possession, and in this seems to go beyond the general rule of the State. *Am. & Eng. Ency. of Law*, second ed. 16-103. The judgment seems grounded on a very liberal exercise of equitable principles.